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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,036	03/03/2004	Frank Francavilla	EXPAC 3.0-001 CIP	4800
530 7590 03/09/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER CARTAGENA, MELVIN A	
			ART UNIT	PAPER NUMBER
			3754	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/792,036	FRANCAVILLA ET AL.	
	Examiner	Art Unit	
	Melvin A. Cartagena	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) 62 and 63 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-61 is/are allowed.
- 6) ☒ Claim(s) 1-15, 17, 18-21, 23-26 and 28-33 is/are rejected.
- 7) ☒ Claim(s) 2-5, 16, 22 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7122004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-61, drawn to an instrument for applying fluid, classified in class 222, subclass 325.
 - II. Claims 62 and 63, drawn to a method of filling a dispenser, classified in class 141, subclass 18.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process of filling the applicator can be performed by hand.
3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with April M. Mayo on February 06, 2007 a provisional election was made without traverse to prosecute the invention of I, claims 1-61. Affirmation of this election must be made by applicant in replying to this Office action. Claims 62 and 63 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

5. Claim 23 is objected to because of the following informalities: in lines 12 and 14, the claim recites that the pump dispenses fluid in response of movement of the pump tip, however, the tip is fix with respect to the housing and what moves is the entire container. It appears more explanation is required to convey how the tip of the pump moves. Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 6, 8, 10-15, 17, 19, 21, 23-26, 28, 30, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,554,520 to Tsuchiya.

Tsuchiya shows an instrument for applying a fluid as seen in Figs. 2 and 3, having a tampered fluid insert 20 for housing a fluid with a first end 21 and second end 20a, a protruding ridge 24 arranged on the exterior of the container between the first and second end, an outer casing 10 receiving the fluid insert and having a pump actuating surface 11, an applicator tip 11a and a ridge 10c, when assemble the protruding ridge 24 is located between the first end of the outer casing and the casing interior ridge 10c, a pump 22 arranged at the first end, the fluid insert is movable within the outer casing to actuate the pump, see column 5, lines 16-22, a dispenser cap 14, a brush element, see column 4, lines 1 and 2, a ridged seal plug 30 and a dispenser cap 14.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 9, 20 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,554,520 to Tsuchiya in view of US 6,592,282 to Fontanet et al.

Tsuchiya shows all claimed features as discussed above except for an instrument with an applicator in the form of a scrubbing pad. Fontanet shows an instrument for applying fluids, as seen in Fig. 1, with an applicator 103 in the form of a scrubbing pad. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to substitute the applicator brush of Tsuchiya for a scrubbing pad to use the instrument for applying a cosmetic product in the face of a user as taught by Fontanet.

10. Claims 7, 18 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,554,520 to Tsuchiya in view of US 5,295,601 to Bostelman.

Tsuchiya shows all claimed features as discussed above except for the dispensing cap of the instrument having a declogger to fit within the applicator opening. Bostelman shows a cap for a dispenser, as seen in Fig. 1, having a declogger 18. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the cap of the device of Tsuchiya to include a declogger to prevent blockage within the applicator tube as taught by Bostelman.

Art Unit: 3754

Allowable Subject Matter

11. Claims 34-61 are allowed.
12. Claims 2-5, 15, 16, 22 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Benecke shows a pump dispenser with a diaphragm. Nakajima shows a cartridge type applicator. Byun shows a cosmetic dispenser.

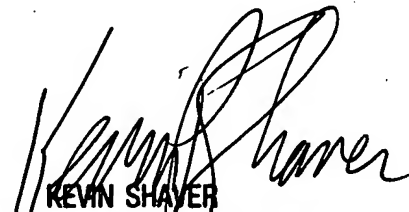
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAC 3/1/07
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